

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

DANIEL R. MAPES,

Respondent,

v.

DIRECTOR OF REVENUE,

Appellant.

DOCKET NUMBER WD73303

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: November 8, 2011

APPEAL FROM

The Circuit Court of Henry County, Missouri
The Honorable James K. Journey, Judge

JUDGES

Division Two: Pfeiffer, P.J., and Howard and Welsh, JJ.

CONCURRING.

ATTORNEYS

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MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

DANIEL R. MAPES,)
)
Respondent,)
v.) **OPINION FILED:**
) **November 8, 2011**
DIRECTOR OF REVENUE,)
)
Appellant.)

WD73303

Henry County

Before Division Two Judges: Mark D. Pfeiffer, Presiding Judge, and
Victor C. Howard and James Edward Welsh, Judges

The Director of Revenue of the State of Missouri ("Director") appeals from the judgment of the Circuit Court of Henry County ("trial court"), ordering the Director to remove the administrative revocation from Daniel R. Mapes's ("Mapes") driving record and to reinstate Mapes's driver's license. The case was submitted on a certified copy of the records of the Department of Revenue.

Although there was evidence that the arresting officer observed Mapes's illegal operation of his motor vehicle and indicia of intoxication after the stop, there was also evidence that Mapes did not have any problems with his speech, balance, or walking at any point prior to the arrest; he completed the One-Leg-Stand Test without difficulty and was able to successfully recite the alphabet when requested to do so. The trial court declined to give any weight to the results of: (i) the Walk-and-Turn Test, because the record did not indicate what the officer instructed Mapes to do during the test and whether Mapes completed the test in accordance with the instructions, and (ii) the Horizontal Gaze Nystagmus ("HGN") Test, because there was no evidence presented to establish either the procedure used during the administration of the test or how the results should be interpreted. The trial court concluded that the Director failed to establish that the officer had probable cause to believe that Mapes was driving while intoxicated at the time of the arrest.

The Director appealed, challenging the trial court's reinstatement of Mapes's driving privileges on the grounds: (i) that there was no basis in the evidence for the trial court to

disregard the HGN test results, and (ii) that the evidence established that the arresting officer had probable cause to arrest Mapes for DWI.

AFFIRMED.

Division Two holds:

1. In determining whether substantial evidence supports the trial court's judgment when it is based solely on documentary evidence, we defer to the ability of the trial court to ascertain the facts. The trial court is accorded wide discretion, even if there is evidence in the record that would support a different result. Accordingly, substantial evidence supported the trial court's determination that the Director did not meet her burden to establish that the officer had reasonable grounds to believe that Mapes was driving a vehicle while in an intoxicated condition at the time of the arrest.

2. Lacking evidence of the officer's qualifications to conduct the HGN test and evidence of how he administered the test, it was reasonable for the trial court to question the reliability of the HGN test administered to Mapes and to conclude that the test result was not entitled to any weight.

Opinion by: Mark D. Pfeiffer, Presiding Judge

November 8, 2011

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THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.

